

[California Civil Code § 1717 is a Proper Basis for an Award of Attorney Fees Pursuant to a Performance Bond](#)

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In *Mepco Services Inc. v. Saddleback Valley* ("Mepco" and "Saddleback"), 2010 DJDAR 16749 (2010), the [California Court of Appeal for the Fourth Appellate District](#) decided a novel attorney fee case arising from a school modernization project.

Mepco bid on the project based on architectural plans that Saddleback had prepared by an architect. During the course of construction, Mepco encountered problems and was forced to do additional work at significantly more cost than was originally contemplated.

Mepco performed the additional work according to directions by Saddleback representatives, but the parties disagreed as to whether Mepco was entitled to be paid for the additional work. Mepco then sued for breach of contract.

Mepco was required to furnish a surety bond to cover 100 percent of the contract price. The agreement to perform the work did not contain an attorney fee provision and was silent on whether the performance bond was required to have a fee clause. Mepco arranged to purchase a performance bond that did include an attorney fee provision. It provided for a fee award for enforcement of the bond.

Saddleback filed a counterclaim for liquidated damages alleging Mepco delayed completing the project, and sought attorney fees under the performance bond. The jury found in favor of Mepco, finding Saddleback materially breached the contract. Mepco then moved for attorney fees under the performance bond, and the lower court granted a fee award.

The appellate court affirmed, noting that [California Civil Code Section 1717](#) provides for a fee award to the prevailing party on a contract that contains a fee clause.

Here, Saddleback sought enforcement of the bond by way of its counterclaim against Mepco and lost on that claim. Saddleback alleged a cause of action for breach of the performance bond. The performance bond that Mepco obtained provided for attorney fees.

Because Mepco prevailed, the court concluded it was entitled to a fee award.